

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.3006 OF 1984

The State Industrial and Investment
Corporation of Maharashtra Ltd. Plaintiffs
Versus
M/s. Processed Timber Products & Ors. ..Defendants
Mr.M.S.Rane i/b Purnanand & Co. for plaintiffs
None for defendants

CORAM : P.V.KAKADE, J.

DATE : 17TH NOVEMBER, 2005

P.C.:

1. Heard the learned counsel for the plaintiffs. None appears for the defendants nor any written statement is filed. The plaintiffs have produced today the affidavit of one Kalpana Harshan, the Asstt.Manager (Legal) and Constituted Attorney of the Plaintiffs regarding their evidence in support of the claim along with compilation of original documents which are to be marked collectively and exhibited accordingly as they are read in evidence and supported by affidavit.

2. The 1st defendant is a partnership firm carrying

on business of manufacturing Parquet i.e. teakwood tiles and defendant nos. 2 to 4 are the partners thereof. The defendant nos.5a to 5d are the legal heirs of defendant no.3. The defendant no.6 is a Corporation established for the State of Maharashtra under the State Financial Corporation Act, 1951.

3. By an Indenture of Mortgage dated 16th April 1975 made between the defendant nos.1 to 4 and said Smt. Sheela Jayant Gandhi i.e one of the original defendants and the defendant no.6 herein. The defendant no.6 lent and advanced to the said original defendants a sum of Rs.4 lacs and further sum of Rs.87,000/= by instalments. The original defendants convented to repay the said sum of Rs.4 lacs and other monies that may be advanced upto a sum of Rs.4,87,000/= together with interest. The said Indenture of Mortgage dated 16.4.1975 is referred to as 'MSFC Mortgage'.

4. The original defendants in consideration thereof mortgaged leasehold interest under sub-lease dated 26.3.1973 made between the Chandra Cooperative Industrial Estate Ltd. as the Lessee and original defendants as the Sub-Lessee in the land hereditaments

and premises lying and being at Plot No.7 out of Khasra No.502 of Chanela Rayatwari in the Chanela Industrial Scheme admeasuring 9174.17 sq. meters of which details are found to be in the Plaint. The defendants requested the plaintiffs to lend and advance a sum of Rs.2,43,000/= on the basis of application dated 15.10.1971. Indenture of Mortgage dated 1st October, 1975, which was duly registered was executed between the original defendants and plaintiffs, whereby original defendants mortgaged their leasehold interest derived under the said Sub-Lease dated 26th March 1973 in the property described under Exh.A to the Plaint together with right, title and interest therein to secure repayment of the said sum of Rs.2,43,000/=. The original defendants agreed to repay the said amount together with interest at the rate of 14.5% per annum subject to variation as may be decided by the plaintiffs payable by 1/2 yearly instalments. Interest for the initial period of four years was to accrue but was made payable in two equal instalments in the fifth year on 15.9.1979 and 15.3.1980 along with conditions embodied in the documents, which also brought on record in original. The amount could not be repaid as per the contract and therefore, the notice was issued to the

defendants but no repayment was made and hence the suit.

5. It is the case of the plaintiffs that the defendants are jointly and severally liable to pay the plaintiffs the sum of Rs.7,40,728.12 being the amount due under the said Sicom Mortgage Rs.2,43,000/= inclusive of interest Rs.4,97,728.12 calculated at 14.5% per annum as per particulars noted in the affidavit of service.

6. It may be noted that the entire claim, as submitted in the affidavit of evidence, is submitted in original documents of record referred to earlier and therefore, there is no doubt whatsoever that the plaintiffs have proved their claim as claimed for especially when it is not challenged nor rebutted in any manner whatsoever by the defendants either by way of filing written statement or by seeking cross examination of the plaintiffs evidence. In view of this position I hold that the plaintiffs have proved their case and are entitled for the decree as prayed for.

7. It is further to be noted that the mortgage property as described in Exhs.A and B to the Plaint for

securing repayment of loans advanced by both the MFFC i.e. defendant no.6 and the plaintiffs herein having 'pari passu' charge thereon have been sold by the defendant no.6 in exercise of rights under provisions of Section 29 of the State Financial Corporation Act. It is further submitted by the plaintiffs that they have received sum of Rs.2,65,384/= on 18.10.1996 from defendant no.6 MFFC towards pro-rata share in sale proceeds and therefore, the plaintiffs are entitled to claim only personal decree against the defendant nos.1 to 4 and 5(a) to 5(d) to the extent of deficit in the claim amount i.e. after reducing the pro-rata sale proceeds received from M.S.F.C. i.e. defendant no.6.

8. The suit is hereby decreed in terms of prayer clause (d) as under -

The defendants Nos. 1 to 4 and Defendant No.5(a) to (d) to the extent of estate of Smt. Sheela Jayant Gandhi shall pay the amount of Rs.1,30,42,097.12 ps. to the Plaintiffs along with interest @ 9% p.a. to the aforesaid amount from the date of the Order till payment or realisation.